

August 24, 2016

Wendy Cleland-Hamnett
Director
Office of Pollution Prevention & Toxics
Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460
Via Electronic Filing at <http://www.regulations.gov>

RE: Fees for the Administration of the Toxic Substances Control Act; Notice, Docket ID No. EPA-HQ-OPPT-2016-0401

Dear Director Cleland-Hamnett:

The National Association of Chemical Distributors (NACD) submits the following comments in response to the notice published by the U.S. Environmental Protection Agency (EPA) regarding docket no. EPA-HQ-OPPT-2016-0401, Fees for the Administration of the Toxic Substances Control Act.

About NACD

NACD is an international association of nearly 440 chemical distributors and their supply-chain partners. NACD members represent more than 85% of the chemical distribution capacity in the nation and generate 93% of the industry's gross revenue. NACD members, operating in all 50 states through nearly 1,800 facilities, are responsible for more than 155,000 direct and indirect jobs in the United States. NACD members are predominantly small regional businesses, many of which are multi-generational and family owned.

NACD members meet the highest standards in safety and performance through mandatory participation in NACD Responsible Distribution®, the association's third-party-verified environmental, health, safety, and security program. Through Responsible Distribution, NACD members demonstrate their commitment to continuous performance improvement in every phase of chemical storage, handling, transportation, and disposal operations.

NACD Recommendations for EPA Fee Administration

NACD is pleased to share our recommendations relating to the fee administration portion of the Frank R. Lautenberg Chemical Safety for the 21st Century Act (LCSA). NACD supported the passage of LCSA and worked closely in Congress to revise the Toxic Substances Control Act (TSCA) for over a decade.

A. EPA Should Make Information Available on the Agency's Historical Costs for Administering Sections 4, 5, 6, and 14

NACD requests EPA to make information available to industry on the agency's historical costs for administering Sections 4, 5, 6, and 14 and to provide information on the projected costs for carrying out these sections under LCSA. Additionally, EPA should make publically available all materials (cost matrices, formulas, methodology, etc.) used to create the new fee structures.

NACD also requests EPA to evaluate and provide at least two or three options for fee administration under LCSA. Additionally, EPA should allow industry adequate time (at least 90 days, if not longer) to review and comment on these options.

EPA should provide several examples of fee estimates in common situations under these options so the public may reasonably know how the fees will be applied. Providing examples of fee situations will allow industry to be certain of EPA's logic when calculating fees and reasonably ascertain that EPA is establishing the fees within the spirit of the law.

B. EPA Should Not Charge Fees for Section 4 Testing

EPA should not impose additional fees for Section 4 testing. When manufacturers or processors conduct testing from either a rule, test order or consent agreement, the manufacturer or processor is already paying for the data generated. Charging a fee would result in double expenses incurred upon the manufacturer or processor. EPA has not exercised its authority to assess fees for Section 4 information in the past, and there is no reason to change this long standing policy. Therefore, NACD highly encourages EPA to avoid establishing a Section 4 fee or include Section 4 testing expenses in any other fee determination.

Further, EPA should send out test orders to all the companies identified as being manufacturers, processors, or importers of the chemicals that need additional data. Sharing this information among the companies would allow for the formation of consortia and for more equity in cost sharing of testing.

C. EPA Should Immediately Revise the Small Manufacturer Definition And Determine an Appropriate Fee Structure for Small Businesses

EPA is required under LCSA to evaluate the definition of small manufacturer and consult with the Small Business Administration (SBA). EPA is also required to establish lower fees for small businesses. These two issues are inextricably linked, and EPA should revise the definition of small manufacturer synchronously when determining a fee structure for small businesses.

NACD strongly believes the current EPA definition of small manufacturer (which has not been revised since the implementation of TSCA in 1976) is so far from the reality of the chemical industry as to be completely unworkable and in need of complete revision.

Even if EPA were to adjust the dollar figures within the current definition, the number of businesses meeting the definition of small manufacturer would be so low that the entire purpose of revising the definition would be moot and not comply with the intent of the law.

Further, the revenue-based standard of the current definition does not distinguish between revenue and profit, which is extremely important when considering small businesses.

Although not all importers of chemicals are manufacturers, chemical distributors who import are treated as manufacturers through EPA's small manufacturer definition, despite having completely different business models and profit margins. One way to correct this imbalance is for EPA to move to a definition that has an employee-based standard. There is plenty of regulatory precedent for this approach. For example, the Family and Medical Leave Act administered by the Department of Labor does not require companies with fewer than 50 employees to provide leave for family or medical reasons.

NACD therefore recommends establishing a definition of small manufacturer that is employee-based, rather than revenue-based, which will much more accurately reflect the proportional business size of companies in the chemical distribution industry. EPA and SBA should closely evaluate the chemical industry (manufacturers, importers, and processors) to determine the number of employees to be used in an employee-based definition that would most appropriately balance the benefits and costs to the agency and to the employer.

Additionally, it is critically important for small businesses to be subject to lower fees for all potential fee collecting activities conducted by EPA under the new authority in LCSA. The methodology for determining the small business fees should be made publically available and the fees themselves should be similar in proportion to the fees now charged for Pre-Manufacture Notice submissions (\$100 for small businesses to \$2,500 for all other businesses).

Conclusion

NACD appreciates EPA's efforts to revise quickly and effectively the outdated TSCA system on the schedule established by the statute. That said, despite the rapid timetable, EPA should carefully and thoroughly obtain industry input to avoid creating a system that is unfeasible.

We highly recommend that EPA take the steps outlined above to help establish a transparent and fair fee system. NACD especially urges EPA to review carefully and closely industry calls for transparency and to review all best practices available to federal agencies for designing and implementing regulatory fees.

Thank you for the opportunity to comment on this important issue. If you have questions or need additional information, please do not hesitate to contact me.

Sincerely,



Jennifer C. Gibson
Vice President, Regulatory Affairs
National Association of Chemical Distributors
1560 Wilson Blvd, Suite 1100
Arlington, VA 22209